

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
NPCR, Inc. d/b/a/ Nextel Partners)	
)	
Petition for Designation as)	
Eligible Telecommunications Carrier)	
in the State of Pennsylvania)	

COMMENTS

TDS Telecommunications Corp. (“TDS Telecom”), parent company of Mahanoy & Mahantongo Telephone Company and Sugar Valley Telephone Company, submits these comments in response to the Supplement to Petition for ETC Designation in the State of Pennsylvania (“Supplement”) filed by NPCR, Inc. d/b/a/ Nextel Partners (“Nextel Partners”)¹ in response to the Commission’s *Virginia Cellular* decision.² The Supplement does not respond effectively to the concerns previously raised in this proceeding and does not justify grant of the underlying petition for designation as an eligible telecommunications carrier (“ETC”) entitled to receive universal service support in certain rural areas of Pennsylvania (the “Nextel Partners Petition”).

¹ See *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Pennsylvania*, CC Docket No. 96-45, Supplement (March 24, 2004) (“*Pennsylvania Supplement*”).

² *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

The Commission should not grant the Nextel Partners Petition, or any of the other Nextel Partners ETC petitions pending before the Commission (together with the Nextel Partners Petition, the “Nextel Partners FCC Petitions”), until the Commission has resolved the significant ETC designation issues raised in the pending Recommended Decision of the Federal-State Joint Board on Universal Service (“Joint Board”).³ The Nextel Partners FCC Petitions, together with other Nextel Partners petitions for ETC designation pending (or granted) before state public utility commissions (collectively, the “Nextel Partners State Petitions” and, together with the Nextel Partners FCC Petitions, the “Nextel Partners Petitions”) will have a significant overall impact on the Universal Service Fund (“USF” or the “Fund”). The Commission must develop a framework for evaluating—and mitigating—that impact before it can grant ETC status to a national wireless carrier like Nextel Partners. If the Commission reaches the merits of the Nextel Partners Petition, it should find that the Petition, as amended by the Supplement, fails to satisfy the public interest requirements set forth in *Virginia Cellular*.

I. THE COMMISSION SHOULD NOT CONSIDER GRANTING ETC STATUS TO NEXTEL PARTNERS UNTIL AFTER THE COMMISSION HAS RESOLVED THE PENDING ETC DESIGNATION ISSUES

The Commission is currently evaluating a number of proposals to revise the rules relating to High-Cost universal service support and the criteria and procedures for designating ETCs eligible to receive that support.⁴ The Recommended Decision laying out these proposals

³ Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (“Recommended Decision”).

⁴ The Joint Board issued a request for comments on these issues in February 2003. Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Service Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) (“*High Cost/ETC Notice*”). Commenters identified a number of factors the Commission should consider in

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recognized the value of setting out concrete guidelines to ensure that only fully-qualified carriers that are capable of and committed to providing universal service in fact receive universal service support.⁵ The Commission has not evaluated or implemented the Joint Board recommendations.

Although the ultimate framework for designating ETCs has yet to be determined, the Commission has considered certain discrete petitions for ETC designation in *Virginia Cellular* and *Highland Cellular*.⁶ In *Virginia Cellular*, the Commission stated that it would apply the public interest standards set forth in that order to other pending petitions for ETC designation in rural areas.⁷ The Commission also acknowledged, however, that *Virginia Cellular* did not set out a “framework” for evaluating an issue the Commission found was not implicated in those petitions: the burden on the USF created by the rapid growth in high-cost support distributed to competitive ETCs. The Commission stated:

Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs. . . . This concern has been raised by parties in this proceeding, especially as it relates to the long-term sustainability of universal service high-cost support. . . . It is our hope that the Commission’s pending rulemaking proceeding also will provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.⁸

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determining whether to grant ETC designation, especially in rural service areas. The Joint Board has issued a Recommended Decision, which is now before the Commission.

⁵ Recommended Decision ¶ 2.

⁶ *Federal-State Joint Board on Universal Service Highland Cellular, Inc Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order (rel. April 12, 2004) (“*Highland Cellular*”).

⁷ See *Virginia Cellular* ¶ 4.

⁸ See *Virginia Cellular* ¶ 31.

The need to address (and reduce) the overall burden on the USF from increasing designation of competitive ETCs was recognized both by the full Joint Board and by the federal Commissioners on the Joint Board.⁹

Given the issue left open in *Virginia Cellular* and *Highland Cellular*, it is not appropriate for the Commission to evaluate *all* pending ETC petitions under the *Virginia Cellular* standard. There is a difference between petitions by regional carriers like Virginia Cellular and Highland Cellular and petitions by national carriers like Nextel Partners. Nextel Partners has demonstrated, by filing and pursuing the Nextel Partners Petitions, that it intends to employ a national strategy of drawing significant support from the Fund.¹⁰ Accordingly, the Nextel Partners Petitions uniquely implicate the issue that the Commission has acknowledged remains unresolved—the long-term sustainability of the Fund in the face of growing support payments to competitive ETCs. Thus, the Commission cannot evaluate the Nextel Partners Petitions until the outstanding issues have been addressed and the Commission has established a framework for evaluating the overall impact on the Fund of petitions for ETC designation.¹¹

⁹ See Recommended Decision ¶ 67 (the Joint Board’s “examination of the record reveals a potential for uncontrolled growth [of the USF] as more and more competitive ETCs are designated in rural and high-cost areas”); Separate Statement of Commissioner Kathleen Q. Abernathy (“[I]t seems clear that the universal service fund can no longer subsidize an unlimited number of connections provided by an unlimited number of carriers.”); Separate Statement of Commissioner Kevin J. Martin, (“I concur in the Joint Board’s recommendation to seek alternative means of limiting fund growth.”); Joint Separate Statement of Commissioners Jonathan S. Adelstein, et al. (“There are other better means to control fund growth” than the primary line proposal.).

¹⁰ See Part II below; see also Nextel Partners, Inc., 2003 Form 10-K, at 23 (SEC file no. 000-29633, filed Mar. 15, 2004) (Nextel Partners 2003 10-K) (“We are in the process of petitioning for ETC status for our high cost, rural and insular coverage areas by a number of state jurisdictions, and have already received ETC status in several states. We have pending petitions for ETC designation before the FCC and state commissions in various other states. . . . Such universal service support payments can in some areas be significant amounts of money.”)

¹¹ As in *Virginia Cellular* and *Highland Cellular*, a decision on these pending petitions could pre-judge the on-going work of the Commission in setting the ultimate framework. See *Virginia Cellular*, Dissenting Statement of Commissioner Kevin J. Martin at 2.

II. GRANTING THE NEXTEL PETITIONS WOULD HAVE A SIGNIFICANT OVERALL IMPACT ON THE UNIVERSAL SERVICE FUND

The Supplement contends that granting the requested ETC status will not have a significant overall impact on the Fund because Nextel Partners expects to draw only \$840,000 annually from the Fund in the designated service area. But this Nextel Partners Petition cannot be viewed in isolation. The Nextel Partners Petition is but one of seven ETC designation petitions pending before the Commission.¹² In addition, Nextel Partners has already been granted ETC status in at least four¹³ states and has ETC petitions pending in eight more.¹⁴ If granted, these Nextel Partners Petitions together would result in Nextel Partners' receiving well

¹² In addition to the *Pennsylvania Supplement*, see *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Supplement (April 21, 2004); *Nextel Partners of Upstate New York d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*, Supplement (March 24, 2004); *NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, Supplement (March 24, 2004); *NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, Supplement (March 24, 2004); *NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida*, Supplement (April 21, 2004); *NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, Supplement (March 24, 2004).

¹³ The four states are Arkansas (http://170.94.29.3/pdfstorage/03-141-u_14_1.pdf); Iowa (http://www.state.ia.us/government/com/util/private/Orders/2003/0515_199iac392.pdf); Mississippi (http://205.144.224.49/libdocopen.asp?TMPLNAME=MPSCCASE&VS_ABSID=168306); and Wisconsin (http://psc.wi.gov/a_erf_share/view/viewdoc.aspx?docid=6170).

¹⁴ These states include: Idaho (http://www.puc.state.id.us/fileroom/telecom/gnrt0316/a_pp.pdf); Illinois (http://eweb.icc.state.il.us/e-docket/reports/browse/docket_detail.asp?id=3516&no=03-0312&cso=DESC&cpn=1&cps=100&cdr=0&cbm=3&cbd=30&cby=2004&cem=4&ced=30&cey=2004&kso=DESC&kpn=1&kps=100&kdr=0&kbm=3&kbd=30&kby=2004&kem=4&ked=30&key=2004&smm=4&syy=2004); Indiana (http://www.in.gov/iurc/procedural/library/2003/03_dockets/03de_index.html); Kentucky (http://psc.ky.gov/agencies/psc/orders/022004/200300143_04.pdf); Louisiana (<http://www.lpsc.org/documents.asp>); Nebraska (<http://www.psc.state.ne.us/home/NPSC/communication/C2932040224.pdf>); Texas (http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgControl.asp?TXT_UTILITY_TYPE=T&TXT_CNTRL_NO=27709&TXT_ITEM_MAT_CH=1&TXT_ITEM_NO=&TXT_N_UTILITY=&TXT_N_FILE_PARTY=&TXT_DOC_TYPE=ALL&TXT_D_FR_OM=&TXT_D_TO=&TXT_NEW=true); and West Virginia (<http://www.psc.state.wv.us/webdocket/default.htm>).

over \$5-6 million annually in USF payments.¹⁵ This is obviously a more significant *overall* impact on the Fund than the *Virginia Cellular* or *Highland Cellular* ETC designations. The Commission must take this overall impact into account in evaluating each Nextel Partners Petition.

Moreover, granting the Nextel Partners Petition would have an impact on the Fund that extends beyond the payments made just to Nextel Partners. OPASTCO has pointed out that if the Commission grants ETC status to a national provider such as Nextel Partners, other national CMRS providers will feel compelled to seek ETC designation to remain competitive. This could result in a dramatic increase in the size of the USF—more than \$2 billion annually if all wireless carriers nationwide were granted ETC status.¹⁶

Because of the potential for exponential growth in the Fund that could be triggered by granting the Nextel Partners Petition, the Commission should defer deciding all the pending Nextel Partners FCC Petitions until it issues a final rule establishing a framework for evaluating and mitigating the overall impact on the USF of ETC petitions that, alone or in the aggregate, will have a significant impact on the Fund.

¹⁵ The Nextel Partners FCC Petitions together estimate that Nextel Partners would draw a total of \$3.4 million annually from the Fund if the *FCC* Petitions were granted. Similar estimates are not provided for the Nextel Partners State Petitions, but a very conservative estimate that Nextel Partners would draw as much from the Fund in the twelve states in which it has sought or been granted ETC status from the state commission as in the seven states in which Nextel Partners is seeking ETC status from the FCC would yield a total of \$6.8 million drawn from the Fund annually. The actual amount could be even higher than that.

¹⁶ Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies in CC Docket No. 96-45, at 3 (May 5, 2003) (“OPASTCO Comments”).

III. THE NEXTEL PARTNERS PETITION AND SUPPLEMENT DO NOT MEET THE PUBLIC INTEREST CRITERIA SET FORTH IN *VIRGINIA CELLULAR*

If the Commission does reach the merits of the Nextel Partners Petition, it must evaluate the request for ETC status under the public interest framework enunciated in *Virginia Cellular*. That is, the Commission must “weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service, and the competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.”¹⁷ Under this standard, as applied in *Virginia Cellular* and *Highland Cellular*, the claims made in the Nextel Partners Petition and Supplement do not support a finding that the public interest would be served by granting the requested ETC status.

The Supplement continues to rely largely on the presumed benefits of competitive choice and mobility to support Nextel Partners’ contention that the public interest would be served by granting Nextel Partners ETC status in the designated rural service area. Nextel Partners simply does not offer the types of concrete commitments made by Virginia Cellular and Highland Cellular. First, Nextel Partners touts its ability to “allow customers access to telecommunications and data *in situations* ‘where they do not have access to a wireline telephone.’”¹⁸ Nextel Partners here quotes from the portion of *Virginia Cellular* describing Virginia Cellular’s commitment to expand its network to “serve *residences* to the extent that they do not have access to the public switched network through the incumbent telephone company.”¹⁹

¹⁷ *Virginia Cellular* ¶ 28; see also *Highland Cellular* ¶ 22.

¹⁸ Supplement at 8 (emphasis added).

¹⁹ *Virginia Cellular* ¶ 29 (emphasis added).

Nextel Partners makes no such commitment.²⁰ Second, Nextel Partners cites “wireless access to emergency services” as a public interest benefit identified in *Virginia Cellular*.²¹ But, unlike *Virginia Cellular*, Nextel Partners does not commit to comply with state and federal 911 and E-911 mandates. Third, Nextel Partners claims that the public will benefit from Nextel Partners’ larger local calling area.²² Unlike *Virginia Cellular*, however, Nextel Partners does not commit to offer a variety of local usage plans at a range of prices and including a large volume of minutes.

The Supplement falls short of *Virginia Cellular* in other respects as well. For instance, although Nextel Partners commits to using USF support to improve its network facilities and reach areas it does not currently serve, Nextel Partners does not make a representation, similar to *Virginia Cellular*’s, that it will use the support to serve sparsely populated areas.²³ In addition, although Nextel Partners states that it currently advertises its

²⁰ Nextel Partners’ most recent Annual Report filed with the Securities and Exchange Commission indicates that Nextel Partners does not plan to target residential customers at all. *See* Nextel Partners 2003 10-K at 6 (“We focus on business customers, particularly those customers who employ a mobile workforce. . . . We have developed disciplined sales training procedures and strategies that are specifically tailored to a business-to-business sales process as opposed to the widespread retail sales strategies used by many of our competitors.”). There is no indication that Nextel Partners intends to modify this sales strategy if granted ETC status. *Id.* (“We expect to gradually expand our target customer groups to include additional *industry* groups.”) (emphasis added). Finally, there is some suggestion that in more sparsely populated areas, Nextel Partners plans to serve highway travelers rather than rural residents. *Id.* at 8-9 (“[O]ur markets include selected corridors along interstate and state highways. While these corridors do not always have large business or residential populations, we believe that significant revenues will be earned from travelers on the highways located in these markets.”)

²¹ Supplement at 8.

²² Supplement at 8-9.

²³ The Nextel Partners Annual Report suggests that Nextel Partners is *not* committed to providing “universal service” throughout the areas in which it has sought ETC status. The Annual Report admits that “the Nextel Digital Wireless Network may never cover the same geographic areas as other mobile telephone services.” Nextel Partners 2003 10-K at 16. In addition, Nextel Partners “expect(s) to continue to charge higher prices for [its] telephones than the prices charged by operators for analog cellular telephones and possibly than the prices charged by operators for digital cellular telephones” and does not offer its subscribers dual mode/dual band telephones that “combine the enhanced features set available on digital PCS systems within their digital service coverage areas with the broader

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services by means of newspapers, television, radio, and its Internet website, Nextel Partners does not commit to the same level or medium of advertising for USF-supported services, nor does it describe in detail how it plans to advertise the availability and terms and conditions of Lifeline and Linkup services.²⁴ In short, the Petition and Supplement offer no indication that Nextel Partners plans to alter its pre-existing construction, service or marketing plans in any way in order to offer truly “universal service” in the rural service areas in which it seeks ETC status.

Finally, Nextel Partners does not even attempt to address the overall impact of the Nextel Partners FCC Petitions on the USF. Nor does Nextel Partners weigh the purported benefits of its ETC designation against the potential harm to consumers in the affected rural study areas. Nextel Partners does not guarantee quality service to all portions of the designated study area.²⁵ As a result, Nextel Partners could target only the more highly concentrated population centers within the study area, while more remote areas are still served only by the ILEC.²⁶ In both *Virginia Cellular* and *Highland Cellular*, the Commission expressed concern that when a competitive ETC “serves only the customers that are the least expensive to serve, [it can] thereby undercut[] the ILEC’s ability to provide service throughout the area.”²⁷ Nextel

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wireless coverage available on the analog cellular network.” Accordingly, Nextel Partners subscribers will have “to accept system coverage limitations as a trade-off for the enhanced multi-function wireless communications package” Nextel Partners offers. *Id.* at 16-17.

²⁴ Nextel Partners in fact has developed advertising and sales strategies that target business rather than residential customers. *See supra* note 20.

²⁵ *See* Nextel Partners 2003 10-K at 16 (“[W]e anticipate that the Nextel Digital Wireless Network may never cover the same geographic areas as other mobile telephone services.”).

²⁶ Targeting more concentrated population centers within rural territories is consistent with Nextel Partners’ stated strategy of targeting business customers and highway travelers. *See supra* note 20.

²⁷ *Highland Cellular* ¶ 26, n.80.

Partners has not demonstrated that the purported benefits of providing USF support to Nextel

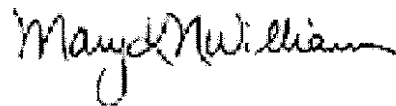
Partners' competitive mobile service offering outweigh this potential harm.

CONCLUSION

Because the pending Nextel Partners FCC Petitions, taken together, would have a significant *overall* impact on the Universal Service Fund, the Commission should not entertain those Petitions until it has developed a framework for evaluating—and mitigating—the overall impact on the Fund from increasing support payments to competitive ETCs. If the Commission does reach the merits of the Nextel Partners Petition and Supplement, it should find that Nextel Partners has not made a sufficient showing that the public interest would be served by grant of the Petition.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORP.



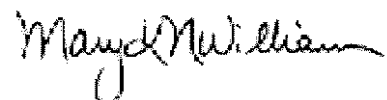
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May 7, 2004

CERTIFICATE OF SERVICE

I, Mary Newcomer Williams, hereby certify that on this 7th day of May, 2004, I caused one copy of the foregoing comments to be served by first-class mail, postage prepaid, on the following:

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